

REMARKS

Claims 1-13, 16-36 and 40-43 are pending in the application. Claims 1-13, 16-22, 24-36 and 40-43 are rejected under 35 U.S.C. §103(a). Claim 23 is objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claim 23 to be written in independent form including all of the limitations of the base claim and any intervening claims and hence claim 23 is allowable. Applicant respectfully traverses these rejections for at least the reasons stated in the response having a mailing date of January 8, 2004 and files a Notice of Appeal concurrently herewith.

Applicant notes that claim 23 was not amended to overcome prior art but to be written in independent form. Hence, the amendment made to claim 23 was not narrowing in scope and therefore no prosecution history estoppel arises from the amendment to claim 23. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendment made to claim 23 was not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such an amendment. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

CONCLUSION

As a result of the foregoing, it is asserted by Applicant that claims 1-13, 16-36 and 40-43 in the Application are in condition for allowance, and Applicant respectfully requests an allowance of such claims. Applicant respectfully requests that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicant

By: 

Kelly K. Kordzik
Reg. No. 36,571
Robert A. Voigt, Jr.
Reg. No. 47,159

P.O. Box 50784
Dallas, Texas 75201
(512)370-2832

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